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HOUSE BILL NO. 720

Offered January 10, 2018

Prefiled January 9, 2018

A *BILL to amend and reenact §§ 18.2-57 and 18.2-308.2:3 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-308.1:6, relating to purchase and transport of firearms; simple assault hate crime.*

Patrons—Plum, Bagby, Boysko, Hope, Kory, Levine, Simon and Tyler

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-57 and 18.2-308.2:3 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-308.1:6 as follows:

§ 18.2-57. Assault and battery; penalty.

A. 1. Any person who commits a simple assault or assault and battery is guilty of a Class 1 misdemeanor; ~~and if the~~.

2. Any person who commits a simple assault or assault and battery and intentionally selects the person against whom a simple assault is committed because of his race, religious conviction, color or national origin, ~~is guilty of a Class 1 misdemeanor and~~ the penalty upon conviction shall include a term of confinement of at least six months, 30 days of which shall be a mandatory minimum term of confinement.

B. However, if a person intentionally selects the person against whom an assault and battery resulting in bodily injury is committed because of his race, religious conviction, color or national origin, the person is guilty of a Class 6 felony, and the penalty upon conviction shall include a term of confinement of at least six months, 30 days of which shall be a mandatory minimum term of confinement.

C. In addition, if any person commits an assault or an assault and battery against another knowing or having reason to know that such other person is a judge, a magistrate, a law-enforcement officer as defined in subsection F, a correctional officer as defined in § 53.1-1, a person directly involved in the care, treatment, or supervision of inmates in the custody of the Department of Corrections or an employee of a local or regional correctional facility directly involved in the care, treatment, or supervision of inmates in the custody of the facility, a person directly involved in the care, treatment, or supervision of persons in the custody of or under the supervision of the Department of Juvenile Justice, an employee or other individual who provides control, care, or treatment of sexually violent predators committed to the custody of the Department of Behavioral Health and Developmental Services, a firefighter as defined in § 65.2-102, or a volunteer firefighter or any emergency medical services personnel member who is employed by or is a volunteer of an emergency medical services agency or as a member of a bona fide volunteer fire department or volunteer emergency medical services agency, regardless of whether a resolution has been adopted by the governing body of a political subdivision recognizing such firefighters or emergency medical services personnel as employees, engaged in the performance of his public duties anywhere in the Commonwealth, such person is guilty of a Class 6 felony, and, upon conviction, the sentence of such person shall include a mandatory minimum term of confinement of six months.

Nothing in this subsection shall be construed to affect the right of any person charged with a violation of this section from asserting and presenting evidence in support of any defenses to the charge that may be available under common law.

D. In addition, if any person commits a battery against another knowing or having reason to know that such other person is a full-time or part-time employee of any public or private elementary or secondary school and is engaged in the performance of his duties as such, he is guilty of a Class 1 misdemeanor and the sentence of such person upon conviction shall include a sentence of 15 days in jail, two days of which shall be a mandatory minimum term of confinement. However, if the offense is committed by use of a firearm or other weapon prohibited on school property pursuant to § 18.2-308.1, the person shall serve a mandatory minimum sentence of confinement of six months.

E. In addition, any person who commits a battery against another knowing or having reason to know that such individual is a health care provider as defined in § 8.01-581.1 who is engaged in the performance of his duties in a hospital or in an emergency room on the premises of any clinic or other facility rendering emergency medical care is guilty of a Class 1 misdemeanor. The sentence of such person, upon conviction, shall include a term of confinement of 15 days in jail, two days of which shall

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59 be a mandatory minimum term of confinement.

60 F. As used in this section:

61 "Hospital" means a public or private institution licensed pursuant to Chapter 5 (§ 32.1-123 et seq.) of
62 Title 32.1 or Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2.

63 "Judge" means any justice or judge of a court of record of the Commonwealth including a judge
64 designated under § 17.1-105, a judge under temporary recall under § 17.1-106, or a judge pro tempore
65 under § 17.1-109, any member of the State Corporation Commission, or of the Virginia Workers'
66 Compensation Commission, and any judge of a district court of the Commonwealth or any substitute
67 judge of such district court.

68 "Law-enforcement officer" means any full-time or part-time employee of a police department or
69 sheriff's office that is part of or administered by the Commonwealth or any political subdivision thereof
70 who is responsible for the prevention or detection of crime and the enforcement of the penal, traffic or
71 highway laws of the Commonwealth, any conservation officer of the Department of Conservation and
72 Recreation commissioned pursuant to § 10.1-115, any special agent of the Virginia Alcoholic Beverage
73 Control Authority, conservation police officers appointed pursuant to § 29.1-200, full-time sworn
74 members of the enforcement division of the Department of Motor Vehicles appointed pursuant to
75 § 46.2-217, and any employee with internal investigations authority designated by the Department of
76 Corrections pursuant to subdivision 11 of § 53.1-10, and such officer also includes jail officers in local
77 and regional correctional facilities, all deputy sheriffs, whether assigned to law-enforcement duties, court
78 services or local jail responsibilities, auxiliary police officers appointed or provided for pursuant to
79 §§ 15.2-1731 and 15.2-1733, auxiliary deputy sheriffs appointed pursuant to § 15.2-1603, police officers
80 of the Metropolitan Washington Airports Authority pursuant to § 5.1-158, and fire marshals appointed
81 pursuant to § 27-30 when such fire marshals have police powers as set out in §§ 27-34.2 and 27-34.2:1.

82 "School security officer" means an individual who is employed by the local school board for the
83 purpose of maintaining order and discipline, preventing crime, investigating violations of school board
84 policies and detaining persons violating the law or school board policies on school property, a school
85 bus or at a school-sponsored activity and who is responsible solely for ensuring the safety, security and
86 welfare of all students, faculty and staff in the assigned school.

87 G. "Simple assault" or "assault and battery" shall not be construed to include the use of, by any
88 school security officer or full-time or part-time employee of any public or private elementary or
89 secondary school while acting in the course and scope of his official capacity, any of the following: (i)
90 incidental, minor or reasonable physical contact or other actions designed to maintain order and control;
91 (ii) reasonable and necessary force to quell a disturbance or remove a student from the scene of a
92 disturbance that threatens physical injury to persons or damage to property; (iii) reasonable and
93 necessary force to prevent a student from inflicting physical harm on himself; (iv) reasonable and
94 necessary force for self-defense or the defense of others; or (v) reasonable and necessary force to obtain
95 possession of weapons or other dangerous objects or controlled substances or associated paraphernalia
96 that are upon the person of the student or within his control.

97 In determining whether a person was acting within the exceptions provided in this subsection, due
98 deference shall be given to reasonable judgments that were made by a school security officer or
99 full-time or part-time employee of any public or private elementary or secondary school at the time of
100 the event.

101 **§ 18.2-308.1:6. Purchase or transportation of firearms by persons convicted of hate crime.**

102 *Any person who has been convicted of a violation of subdivision A 2 of § 18.2-57 on or after July 1,*
103 *2018, shall be ineligible to purchase or transport a handgun. Upon expiration of five years from the*
104 *date of such conviction and provided that the person has not been convicted of any such offense within*
105 *that period, the ineligibility shall be removed.*

106 **§ 18.2-308.2:3. Criminal background check required for employees of a gun dealer to transfer**
107 **firearms; exemptions; penalties.**

108 A. No person, corporation, or proprietorship licensed as a firearms dealer pursuant to 18 U.S.C.
109 § 921 et seq. shall employ any person to act as a seller, whether full-time or part-time, permanent,
110 temporary, paid or unpaid, for the transfer of firearms under § 18.2-308.2:2, if such employee would be
111 prohibited from possessing a firearm under § 18.2-308.1:1, 18.2-308.1:2, or 18.2-308.1:3, subsection B
112 of § 18.2-308.1:4, or § 18.2-308.2 or 18.2-308.2:01 or is an illegal alien, or is prohibited from
113 purchasing or transporting a firearm pursuant to subsection A of § 18.2-308.1:4 or § 18.2-308.1:5 or
114 18.2-308.1:6.

115 B. Prior to permitting an applicant to begin employment, the dealer shall obtain a written statement
116 or affirmation from the applicant that he is not disqualified from possessing a firearm and shall submit
117 the applicant's fingerprints and personal descriptive information to the Central Criminal Records
118 Exchange to be forwarded to the Federal Bureau of Investigation (FBI) for the purpose of obtaining
119 national criminal history record information regarding the applicant.

120 C. Prior to August 1, 2000, the dealer shall obtain written statements or affirmations from persons

employed before July 1, 2000, to act as a seller under § 18.2-308.2:2 that they are not disqualified from possessing a firearm. Within five working days of the employee's next birthday, after August 1, 2000, the dealer shall submit the employee's fingerprints and personal descriptive information to the Central Criminal Records Exchange to be forwarded to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record information regarding the request.

C1. In lieu of submitting fingerprints pursuant to this section, any dealer holding a valid federal firearms license (FFL) issued by the Bureau of Alcohol, Tobacco and Firearms (ATF) may submit a sworn and notarized affidavit to the Department of State Police on a form provided by the Department, stating that the dealer has been subjected to a record check prior to the issuance and that the FFL was issued by the ATF. The affidavit may also contain the names of any employees that have been subjected to a record check and approved by the ATF. This exemption shall apply regardless of whether the FFL was issued in the name of the dealer or in the name of the business. The affidavit shall contain the valid FFL number, state the name of each person requesting the exemption, together with each person's identifying information, including their social security number and the following statement: "I hereby swear, under the penalty of perjury, that as a condition of obtaining a federal firearms license, each person requesting an exemption in this affidavit has been subjected to a fingerprint identification check by the Bureau of Alcohol, Tobacco and Firearms and the Bureau of Alcohol, Tobacco and Firearms subsequently determined that each person satisfied the requirements of 18 U.S.C. § 921 et seq. I understand that any person convicted of making a false statement in this affidavit is guilty of a Class 5 felony and that in addition to any other penalties imposed by law, a conviction under this section shall result in the forfeiture of my federal firearms license."

D. The Department of State Police, upon receipt of an individual's record or notification that no record exists, shall submit an eligibility report to the requesting dealer within 30 days of the applicant beginning his duties for new employees or within 30 days of the applicant's birthday for a person employed prior to July 1, 2000.

E. If any applicant is denied employment because of information appearing on the criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a copy of the criminal history record from the Federal Bureau of Investigation. The information provided to the dealer shall not be disseminated except as provided in this section.

F. The applicant shall bear the cost of obtaining the criminal history record unless the dealer, at his option, decides to pay such cost.

G. Upon receipt of the request for a criminal history record information check, the State Police shall establish a unique number for that firearm seller. Beginning September 1, 2001, the firearm seller's signature, firearm seller's number and the dealer's identification number shall be on all firearm transaction forms. The State Police shall void the firearm seller's number when a disqualifying record is discovered. The State Police may suspend a firearm seller's identification number upon the arrest of the firearm seller for a potentially disqualifying crime.

H. This section shall not restrict the transfer of a firearm at any place other than at a dealership or at any event required to be registered as a gun show.

I. Any person who willfully and intentionally requests, obtains, or seeks to obtain criminal history record information under false pretenses, or who willfully and intentionally disseminates or seeks to disseminate criminal history record information except as authorized by this section and § 18.2-308.2:2, shall be guilty of a Class 2 misdemeanor.

J. Any person willfully and intentionally making a materially false statement on the personal descriptive information required in this section shall be guilty of a Class 5 felony. Any person who offers for transfer any firearm in violation of this section shall be guilty of a Class 1 misdemeanor. Any dealer who willfully and knowingly employs or permits a person to act as a firearm seller in violation of this section shall be guilty of a Class 1 misdemeanor.

K. There is no civil liability for any seller for the actions of any purchaser or subsequent transferee of a firearm lawfully transferred pursuant to this section.

L. The provisions of this section requiring a seller's background check shall not apply to a licensed dealer.

M. Any person who willfully and intentionally makes a false statement in the affidavit as set out in subdivision C 1 shall be guilty of a Class 5 felony.

N. For purposes of this section:

"Dealer" means any person, corporation or proprietorship licensed as a dealer pursuant to 18 U.S.C. § 921 et seq.

"Firearm" means any handgun, shotgun, or rifle that will or is designed to or may readily be converted to expel single or multiple projectiles by action of an explosion of a combustible material.

"Place of business" means any place or premises where a dealer may lawfully transfer firearms.

182 "Seller" means for the purpose of any single sale of a firearm any person who is a dealer or an agent
183 of a dealer, who may lawfully transfer firearms and who actually performs the criminal background
184 check in accordance with the provisions of § 18.2-308.2:2.

185 "Transfer" means any act performed with intent to sell, rent, barter, trade or otherwise transfer
186 ownership or permanent possession of a firearm at the place of business of a dealer.

187 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
188 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0**
189 **for periods of imprisonment in state adult correctional facilities and cannot be determined for**
190 **periods of commitment to the custody of the Department of Juvenile Justice.**